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PTO/SB/61 (10-05)

Approved for use through 07/31/2008. OMB 0951-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)		Docket Number (Optional)
First Named Inventor: <u>JAMES PETER DE WELT</u> Art Unit: <u>1661</u> Application Number: <u>101619411</u> Examiner: <u>KENT L. BELL</u> Filed: <u>07/16/2003</u> Title: <u>PAPAVER SUPPOPPY hybrid 'HEARTBEAT'</u>		
Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450		
NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.		
The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.		
APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION. NOTE: A grantable petition requires the following items:		
(1) Petition fee. (2) Reply and/or issue fee. (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and (4) Adequate showing of the cause of unavoidable delay.		
1. Petition fee		
<input checked="" type="checkbox"/> Small entity - fee \$ <u>250</u> (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27.		
<input type="checkbox"/> Other than small entity - fee \$ _____ (37 CFR 1.17(l)).		
2. Reply and/or fee		
A The reply and/or fee to the above-noted Office action in the form of <u>AMENDMENT 12/23/2004</u> (Identify the type of reply):		
<input checked="" type="checkbox"/> has been filed previously on <u>DECEMBER 23RD 2004</u> .		
<input type="checkbox"/> is enclosed herewith.		
B The issue fee of \$ _____		
<input type="checkbox"/> has been filed previously on _____.		
<input type="checkbox"/> is enclosed herewith.		

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This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

- 4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.**

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Sandra H. Worth
Signature

21st July 2006
Date

SANDRA H. WORTH
Typed or printed name

Registration Number, if applicable

WATER MEADOW NURSERY
Address

+44 (0)1962 771
Telephone Number

CHERTON NR ALRESFORD
Address

895

HAMPSHIRE ENGLAND, U.K.

Enclosure ☒ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unavoidable delay

☒ Photocopy enclosure - 11 pages.

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

21st July 06
Date

Sandra H. Worth
Signature

SANDRA H. WORTH
Typed or printed name of person signing certificate

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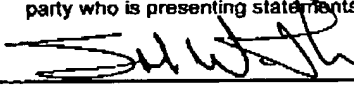
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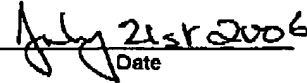
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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature



Date

Mrs. SANDRA M. WORTH.

Typed or printed name

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

My reason for petitioning for revival of an Application for Patent Abandoned Unavoidably Under 37 CFR 1.137(a). Is that

- 1) The time taken for mail to reach me from the examiners office did not take into consideration that my address was overseas and although I made it know that this was the case, it did not give me enough time for me to timely file my response.
- 2) If there were better lines of communication between applicants and examiners it would have been more helpful. Again being overseas this is far more difficult time wise.
- 3) I feel I have not been given the opportunity to correct the application so that it would be acceptable.

I am not in a position to appoint an attorney and I do not think this should make any difference to my application.

Although this is my first attempt to secure a U.S. Plant Patent and the procedures were new to me, I have successfully completed and had granted European Plant Breeders rights for the same plant.

I do not think I should be penalized because my address is overseas.

I do not think I should be penalized for seeking advice.

You will see from the copies of the correspondence enclosed that at each step of the application I have tried by both telephone and fax to contact the examiners office. Most of the time my messages and faxes have gone unanswered. I have done everything in my power to make sure that the application does not fail.

(Please attach additional sheets if additional space is needed.)

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I have set out below the actual circumstances that happened.

- (a) That in the first instance, the document sent from the examiners office on 21st April 2004 was sent via 'REMSEN' to Zurich. (REMSEN, which I believe to be the Mail Bags sent from one country to another via the diplomatic service of the particular Country, then mail is collected again before forwarding to the final destination.) As I live in Hampshire, England U.K. the documents were very delayed. The documents finally arrived 5th of May 2004. Please see my enclosure marked (1.)
- (b) The envelope, enclosed, has no date on the front. Its just post marked CH-four numbers which are unreadable, Zurich then 2 more numbers, the envelope which clearly states if UNDELIVERABLE RETURN IN TEN DAYS.
- (c) Once opened, I found that the most important part was missing, which was an example of the acceptable format for a U.S. Plant Patent, being Plant Patent 12,712. It was not included with the documents as cited by the examiner. Please see enclosure (2) I tried calling by telephone to Mr Kent Bell but I could not reach him, I faxed Mr Kent Bell on the same day explaining this, and asking for a copy of the Plant Patent format to be faxed to me, I also stated that the link to <http://www.uspto.gov/web/pac/dapp/opla/preognotice/revamdtprac.htm> which the examiner made reference, was not working, so I could not obtain a copy at this address. (Please see the examiners letter dated 21 April 2004 page 13 Comments enclosure (3) showing links & telephone & fax numbers which were listed but unavailable.
- (d) The document was not faxed to me as I requested, but it was sent by mail (undated) from the examiners office I received the documents on 05.05.04. Please see 2 pages of the five pages sent listed as enclosure (4) & enclosure (5) it arrived at my office on July 11th 2004 giving me little more than 1 week to complete the new format. The new format required me to completely revamp almost all of the application and get all the documents back to the U.S. Patent Office, in just 10 days. Which taking the time scale involves was unavoidably impossible to achieve.
- (e) Because of the time I had left, I sent the documents back via DHL couriers, after checking by telephone with your general advisory board, that the address was a 'manned' P.O. Box and could be handed to personnel. My reason for enquiring about this is that 'DHL' do not deliver to an un-manned Box Offices for security reasons. You will see from my file that we had great difficulty in getting the documents delivered. Please see a copy of my fax enclosure (6) sent on 17th Of August in desperation as all the telephone numbers on the web site were 'not in use' according to the voice message, telephone numbers given by the general advisory board were also not working. Even the fax number listed on the web was not working. Mr Andrew Wang faxed back the next day. See Enclosure (6A) As stated in my fax I tried my level best to get the documents back on time. I can honestly state that I was unaware that I should 'buy time'. I also state that if I had been informed of this problem, I would have bought the time, even though I feel it is no fault of my own. It was Impossible for me 'to timely reply'.
- (f) My next communication from the office of Mr Kent Bell dated 16th November 2004 this time sent by REMSEN to Port Paye France! Please see enclosure (7) the amendment required gave me 1 month only to reply but the document arrived late again! I received it on December 15th 2004. 1 day before my one-month deadline for a reply to the examiners office. I tried again, all ways to contact the office of the examiner using all the telephone numbers listed and although the answer phone told me to leave a message and they would get back to me, nobody ever phoned me back. I also sent a fax please see enclosure (8) In desperation as I could not get any help or assistance from the examiners office, I sent a fax message to Mr Kent Bell on

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23rd December 2004 enclosing all the documents required, please see enclosure (9a). (9b) pages of some of documents sent to USPTO. The rest can be viewed on line. I heard nothing more from the Examiners office even though I had asked that if the papers were not acceptable could they please contact me.

I received a Confirmation No 4855. Publication No US-2005-0015835-P1 Publication Dated 01/20/2005. After receiving this document, I was now under the impression that everything must be fine and the application was in order.

I did not hear anything to the contrary, until almost 18 months later.

I received A NOTICE OF ABANDONMENT on Friday 23rd June 2006.

Saying Applicant's failure to timely file a proper reply to the Office letter mailed on 11/16/2004.

I would like to make it quite clear that I am not dissatisfied with any one in the Plant Patent Examiners office, I realize that they are very busy people doing their best, but I have a feeling that my whole file became lost for a while.

This is borne out in the fact that the letter of ABANDONMENT was not sent until 14th June 2006, I also don't understand how my mail copy of the documents sent in by fax to the examiners office on December 23rd 2004 where not 'received' BY USTPO until 07/2005? I think my file was mislaid somewhere.

Conclusion

I would like you to take into consideration that in 2003 when I first applied, the U.S. Patent web site was in its infancy compared to today.

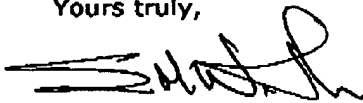
Also please consider that, the telephone numbers listed on both correspondence and on the web were not in service, as per documentary evidence from the examiners letter and as my faxed letters to the examiners explained. Had I been able to view my file in 2003 on the web and follow it through as I would in 2006, I think this predicament would not have arisen. I would be able to check myself the examiners findings and seen that it was recorded on my file that it was a late filing, I feel it is unfair that I did not receive a reply of the notification after my reply on December 23rd 2004.

I feel that if there were better lines of communication I would not be in this position.

This is a true account of the communications I have sent & received from your offices.

I would ask that you look kindly at this petition to reinstate this application.

Yours truly,



Sandra M Worth

21 - July 2006.

BEST AVAILABLE COPY

APPLICATION NO.	PLANT DATE	FIRST NAME/INITIALS
10619411	07/02/03	James Peter Smith
MRS. SANDRA M. WORTH WATER MEADOW NURSERY CHERITON NR. ALRESFORD, HAMPSHIRE, SO24 0QB UNITED KINGDOM		

ENCLOSURE (2)

Water Meadow Nursery & Herb Farm.**Water Meadows, Cheriton Nr: Alresford, Hampshire. SO24 0QB.****Tel: & Fax: 01962 771895.****Mobile: 07799622556****email plantaholic@onetel.net.uk****Web site www.plantaholic.co.uk .**